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MT LEGISLATIVE HISTORY

Chapter 386 1989

Bill H _____ (S) 371 Original bill & hist. ___C

H. Committee on Natural Resources		S. Committee on Natural Resources	
Hearing Date(s) mar 08	✓C	Hearing Date(s) Feb 15	✓C
_____	___C	Feb 17	✓C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out _____	___C	Feb 17	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Note: According to the status sheet, SB 371 was addressed in the House Natural Resources Committee on March 13, 1989. I could find no references to it on that date or on subsequent dates.

Stephen R. Jordan

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairman Thomas F. Keating, on February 15, 1989, at 1:00 P.M. in the State Capitol.

ROLL CALL

Members Present: Senators: Thomas F. Keating, Chairman, Larry Tveit, Fred VanValkenburg, Loren Jenkins, Darryl Meyer, Lawrence Stimatz, Bill Yellowtail, Elmer Severson, Cecil Weeding, Dorothy Eck and Jerry Noble.

Members Excused: None

Members Absent: Pete Story

Staff Present: Bob Thompson and Helen McDonald

HEARING ON SENATE BILL 371

Presentation and Opening Statement by Sponsor: Thomas Hager, District #48, introduced SB 371 and stated he would let the Department of Health and Environmental Sciences carry it.

List of Testifying Proponents and What Group they Represent:

Robert Dozier, Northern Plains Resource Council
Janelle Fallon, Montana Petroleum Assn. (amend)
Art Wittich, Montana Power Company (amend)
Janet Ellis, Audubon Society

List of Testifying Opponents and What Group They Represent:

Ben Havendahl, Montana Motor Carriers Association

Testimony:

Katherine Orr, Department of Health and Environmental Sciences, said this bill is intended to implement some housekeeping measures and some language changes. This bill will keep the department's program parallel with changes that are occurring at the federal level. (Exhibit #1)

Robert Dozier stated that the technology of hazardous waste management has been a growing field. He thinks that is why this bill was introduced. There will probably be bills similar to this in the next session because the technology is constantly changing. NPRC supported the bill.

Janet Ellis supported this bill because it will bring Montana laws up to date. She added that Montana's wildlife areas are affected by hazardous waste, and there are superfund sites on Flathead Lake.

Art Wittich indicated that Montana Power didn't mind the state program being consistent with the federal program. But when the state goes beyond federal law it is difficult, especially in interstate business, to keep up with the various state requirements. He added that there are a couple things in this bill that go beyond the federal program.

One item is on page 8 where the department asks for subpoena power. The department has some subpoena power now but it wants to expand it from power over violators to power over anybody.

On page 8, line 9, "and any other person having information regarding the alleged violation," infringes with the industry's duty of confidentiality with generators. It would be a difficult situation if the district court ordered Montana Power to divulge information, but if the department can do it by themselves, that goes too far. That would go beyond the federal Resource Recovery and Conservation Act.

Under imminent hazard, page 9, line 23, past or present generators, could be more clearly covered under the statute for cleanup orders for past violators. The department already has authority to issue cleanup orders.

On page 11, under criminal penalties, the department wants the ability to post criminal penalties in the act. In the federal law, these penalties attach only to material permit conditions. That makes a difference especially when you look at page 12, line 14 where the department would have no discretion to impose a criminal penalty of less than $5,000. That is not consistent with the federal program. The federal program has a $50,000 limit generally and $250,000 limit for knowing endangerment by a person, or a million dollars by an organization. But it also allows for lower penalties. What the department's language

does is impose a floor that is not appropriate. Even though criminal penalties are extreme, they are for knowing violations and sometimes the violations are small. There should be some discretion there. Art Wittich ended his comment by stating he would like to work with the department to get some amendments in this bill that are consistent with the federal program.

Janelle Fallon stated that the industry would not oppose efforts to control "midnight dumping" of hazardous wastes and to ensure safe disposal of hazardous wastes. She added that the problems with the bill were outlined by Mr. Wittich. She concluded that when industry starts looking at all of the criminal penalties, it appears just about any aspect of doing business in the state has a criminal penalty.

Ben Havdahl was concerned with the extensive penalties outlined in this bill. The question that he raises is why? The enforcement of hazardous waste law allows the department to impose these criminal penalties on violators. He wondered what the problems were in the industries that merit these kinds of penalties. He also pointed to page 11 under criminal penalties, which says "a person who is guilty...", and stated that this wording prejudges guilt.

Questions From Committee Members:

Senator Noble stated that there are a lot of new laws concerning oil storage and what people keep in their garages. He added that improper labeling could result in a fine of $5,000.

Katherine Orr stated these programs are becoming more and more complicated. One aspect of the hazardous waste program, as opposed to the underground storage tank program, is what substances are you talking about and what amount. In Senator Noble's circumstances, the substance would probably be exempt because of the small amount.

Senator Noble stated there are a lot of regulations on just motor oils. How about battery acid?

Katherine Orr stated that battery acid would be a hazardous waste and would have to be handled very carefully.

Senator Noble asked about things that people put in their garages. This bill seems to have a very stiff penalty.

Katherine Orr emphasized that the state department would not

be able to go out and look in every person's garage for an accumulation of battery acid or other kinds of hazardous waste.

Katherine Orr emphasized the criminal penalties apply to the "knowingly fails" violator. The department does not have direct authority to bring criminal action. The matter would be referred to the Attorney General's or the County Attorney's office and would be handled at their discretion.

Senator Keating wanted to know if this legislation had been in force if the department would have been able to catch the "midnight dumper."

Katherine Orr stated it would have helped the department because sometimes DHES gets an incomplete picture of a puzzle. DHES inspectors ask the managers, as opposed to an employee, about where the solvents in the ground came from.

Senator Weeding wondered who spoke about the material language on page 11.

Art Wittich stated that federal standards are a little higher that what the state proposed because they reference permit conditions.

Senator Keating stated this bill doesn't deal with accidents at all. When does a violation start?

Katherine Orr stated it depended on whether it was a violation by a generator or a transporter. If it was a generator making hazardous waste as a by-product of its industrial process, then the hazardous waste is subject to immediate regulation. They are supposed to make sure the hazardous waste doesn't enter the environment and that there is follow-through and documentation as it's handled.

Senator Keating was wondering if there is a violation and fine for non-labeling.

Katherine Orr wanted to caution again about the "knowing violator". It would be very hard to seek criminal penalties on an unknown violator, and the penalty would be smaller assuming the department could find a violation.

Senator Keating wondered what happens if an employer gives direction to label something properly, the employee mislabels it and the employer was unaware of it until

there was an inspection. Is the employer given time to correct an error of that sort or would he be fined under this legislation?

Katherine Orr stated that in the real world a lot of the DHES programs amount to issuing cautionary letters or at the extreme administrative orders to ensure persons get their act together. Filing a civil action would be a more extreme move that the department undertakes very infrequently.

Closing by Sponsor: Katherine Orr stated on behalf of Senator Hager it would be productive for the department and industry to decide what is most problematic and make some drafting changes. A fact sheet was handed out with a schedule of the federal laws and the state's proposed language. In response to Mr. Wittich's observations on page 8 that the department would give itself more authority than the federal reference, the comparison [75-10-413(3) and RCRA 3012(b)] would be noted in the schedule. Under the federal act, agencies have authorization to implement the entire discovery procedure. The department is just asking for early investigation of the situation to out if there might be a potential impact on public health.

DISPOSITION OF SB 371

Discussion: The hearing on this bill was closed.

EXECUTIVE ACTION

SB 238 Senator Keating stated that SB 238 is the coal board bill to suspend the coal board and not spend for employees and space, etc.

Senator Weeding made motion DO NOT PASS The motion passed, with Senator Keating opposing it.

Senator Keating stated SB 211 was moved to second reading by floor action.

SB 327 Senator Keating added that SB 327 is the bill that would amend the Montana Environmental Policy Act by making all permitting actions of government minor actions unless deemed major actions by the department. It allows the professionals in the various agencies to make the determinations as to major or minor actions and if challenged on their decision, there would still be due process in the district court. If the department permits something to remain a minor action, then the burden of proof would be on the appellant in the

ROLL CALL

NATURAL RESOURCES COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 2-15-89

NAME	PRESENT	ABSENT	EXCUSED
Chairman Tom Keating	✓		
Vice-Chairman Larry Tveit	✓		
Senator Fred VanValkenburg	✓		
Senator Loren Jenkins	✓		
Senator Darryl Meyer	✓		
Senator Lawrence Stimatz	✓		
Senator Pete Story		✓	
Senator Bill Yellowtail	✓		
Senator Elmer Severson	✓		
Senator Cecil Weeding	✓		
Senator Dorothy Eck	✓		
Senator Jerry Noble	✓		

Each day attach to minutes.

SENATE NATURAL RESOURCES
EXHIBIT NO. #1
DATE 2-15-89
BILL NO. SB 371

Fact Sheet LC # 853

This bill implements changes which help insure consistency with the federal Resource Recovery and Conservation Act, as amended ("RCRA") and which improve the administrative effectiveness of the Montana hazardous waste program. Increasingly complex circumstances face the State in the regulation and control of hazardous wastes. Hazardous waste generation and handling occurs in multiple types of environments in connection with varying business needs across the State and often on an interstate basis by large and small handlers alike. Therefore, the Department believes that changes in the bill are necessary both for maintenance of equivalency to the federal program and for consistency so that the State is not viewed as an easy dumping ground for hazardous wastes nor as a haven for polluters.

The proposed amendments in the bill adopt statutory language which consists of wording similar to that which is contained in the federal act, which clarifies existing authority or remove ambiguity in interpretation and which strengthens existing state authority. A section by section analysis is provided below:

° The first amendment to Section 75-10-402, MCA, is intended to clarify that administration of the hazardous waste program is a matter for statewide concern and regulation.

° The amendment to Section 75-10-404, MCA, clarifies the Department's implied authority to abate a public nuisance. A public nuisance is any nuisance injurious or offensive to the senses or an obstruction to the free use of property which affects, at the same time, an entire community or neighborhood or a significant number of persons, see Sections 27-30-101 and 27-30-102, MCA. Abatement authority involves the ability of the Department to seek relief from a court which will abate a public nuisance. For example, when an entire community is suffering property damage from mishandling of hazardous wastes, it is important for the Department to have abatement authority as an option for enforcement.

° The amendment to Section 75-10-406, MCA, involves the ability of the Department to require owners and operators holding permits to take corrective action for releases beyond facility boundaries. This is a requirement which parallels federal language and is a requirement which helps to ensure that the Department retains federal authorization to administer the Montana program independently.

° The amendments to Section 75-10-411, MCA, pertaining to monitoring, testing and analysis when there is a substantial hazard presented to the public or the environment also parallel language contained in the federal RCRA. The amendments aid the Department in obtaining as much information as possible about the hazard or presence of hazardous wastes or waste constituents from any persons responsible for the release.

° The amendments to Section 75-10-413, MCA, implement language similar to that which is contained in the federal RCRA; the changes clarify the Department's administrative subpoena authority. The language also helps the Department during a hearing or in an investigation to obtain information about alleged violations and the impacts to public health, welfare or the environment.

° The amendments to Section 75-10-415, MCA, pertain to circumstances where handling, storage, treatment, transportation or disposal of hazardous wastes presents an imminent and substantial danger to the public health and environment. The amendatory language in the bill is very similar to the language in the federal RCRA. The wording changes clarify that persons contributing to the endangerment include past or present generators, transporters or facility owners or operators and that the Department can order such persons to do what is necessary to stop the endangerment and to protect the public health, safety and environment.

° The small wording change in Section 75-10-417, MCA, is intended to make more express or to clarify the fact that violations of a section in the statute, a rule, an order or a permit issued by the Department are separate and distinct and that the penalty may be applied to each kind of violation.

° The amendments to Section 75-10-419, MCA, first distinguish which kinds of intentional acts are the most serious and which therefore warrant a more severe punishment.

The hazardous waste management program is designed to be self-executing and must necessarily be such because of scarce governmental resources; the most serious violations are those which ignore the self-regulatory mechanism of the program or which undermine the other basic objectives of the regulatory program. For example, intentional disposal of hazardous wastes without a permit both destroys the self-executing function of the regulatory program and it fundamentally ignores the objectives of the program which are to carefully control the entry of toxic chemicals into the environment and to ensure that the handling of these materials may be tracked from start to finish.

Acknowledgment by the legislature that these intentional acts are serious violations which warrant a significant punishment goes a long way toward deterring violators from committing the most serious kinds of violations. In many cases without a significant penalty or prison sentence, violators will build the penalty for the violation into the cost of doing business.

The penalty and prison term are expressed in terms of a range so that a judge may weigh the individual circumstances and have discretion in assessing the penalties.

For those violations considered to be of a lesser impact than those in the first category of violations, a smaller punishment is specified in the amendatory language.

° Section 10 is added to the bill in order to clarify that the prohibition against unlawful disposal exists in the hazardous waste act itself in addition to being contained in the rules. Since there are many references in the hazardous waste act to "violations of this part" it is important to include this prohibitory phrase.

Ex. #1
2-15-89
PS. 406 5

SENATE BILL 371
STATE HAZARDOUS WASTE MANAGEMENT ACT

February 15, 1989

STATE PROVISIONS	RCRA - Similar Provisions
75-10-406(7) "In permits... the department shall require corrective action for all releases of hazardous waste ... including corrective action for releases that extend beyond the facility boundaries if necessary to protect public health or the environment."	(RCRA §3004)(v) "... to require that corrective action be taken beyond the facility boundary where necessary to protect human health and environment."
75-10-411(2) "... the department may issue an order requiring the owner or operator of the facility or site or any other responsible party... to conduct reasonable monitoring."	RCRA §3013(d) "If Administrator determines that no owner or operator is able to conduct monitoring, testing analysis ... the Administrator ... authorizes a State or ... other person to carry out any such action ... and require by order the owner or operator [past or present] to reimburse Administrator..."
75-10-413(3) regarding subpoena authority to appear before board or department.	RCRA §3012(b) "... the Administrator shall conduct a public hearing ... the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, book and documents, and may promulgate rules for discovery procedures."
75-10-415 (regarding imminent hazard) "... enjoin any person (including any past or present generator, past or present transporter, and past or present owner or operator of a treatment, storage or disposal facility) who has contributed to or who is..."	RCRA §7003(a) "...Administrator may bring suit ... against any person (including any past or present generator, past or present transporter or past or present owner or operator of a treatment, storage, or disposal facility who has contributed or who is contributing to the alleged disposal ... or to order such person to take such other action as may be necessary or both."

75-10-417 (regarding civil penalties) "(1) Any person ... is subject to a civil penalty not to exceed $10,000 per violation. Each day of violation constitutes a separate violation."	RCRA §3008 "(a)(3)... Any penalty assessed in the [administrative] order shall not exceed $25,000 per day of noncompliance for each violation or a requirement..." see also RCRA §3008(g).
75-10-418 pertains to criminal penalties. For knowing violation the maximum fine is $25,000 per violation or imprisonment for a period not to exceed 3 years or both.	RCRA §3008(d) pertains to knowing violations and a maximum fine of $50,000 or imprisonment not to exceed 5 years. For second conviction the maximum punishment is doubled. In knowing endangerment maximum fine for an individual is $250,000 and for an organization it is $1,000,000.

DATE 2-15-87

COMMITTEE ON NATURAL RESOURCES

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Roger Thunkison	Dept. of Health	SB 371	✓	
Janelle Fallan	MPA	371	Amend	
Jerome Ds	DHES	371	✓	
Robert Dozier	N.F.R.C.	371	✓	
Chris Kaufmann	MEIC	371	✓	
Don Ingels	Mt Chamber of Commerce		Monitor	
Mr Wilson	Mers Club	371		
Ben Havdahl	MT Motor Carriers Ass	371		✓
Mark WITTICH	MPC	371	Amend	
Carrie Barbee	SELF	371	✓	

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Thomas F. Keating, on February 17, 1989, at 1:00 p.m., Room 405, in the State Capitol.

ROLL CALL

Members Present: Senators: Thomas F. Keating, Chairman, Larry Tveit, Darryl Meyer, Lawrence Stimatz, Pete Story, Cecil Weeding, Dorothy Eck and Jerry Noble.

Members Excused: Senator Van Valkenburg

Members Absent: Senators Loren Jenkins, Bill Yellowtail and Elmer Severson.

Staff Present: Bob Thompson and Helen McDonald

SENATE BILL 371

SB 371 deals with the the extension of investigative and enforcement of authority for the Department of Health and Environmental Sciences to address the federal Resource Conservation and Recovery Act (RCRA).

Frank Crowley, Chief Legal Counsel, DHES, stated the amendments are the result of discussions the DHES has had with Mr. Art Wittich of the Montana Power Company. (Exhibit #1) The principal amendment concerns release of subpoena power as it would relate to persons other than the alleged violator. The department has not experienced a significant number of problems in this area but it could be an issue. The department would commit to taking it out now but if its experience in the future indicates its omission is an impediment to the agency's effectiveness getting information about sites, the DHES probably would come back and request the revision at that time.

Senator Weeding moved the amendments.

Bob Thompson stated that on page 8 line 24 subsection (4)(a) was stricken in its entirety. There should follow another small amendment to strike subsection (b) on page 8, line 24.

Senator Noble added the amendments to the motion with Senator Weeding's consent.

Senator Eck asked Mr. Wittich why the Montana Power wants to remove subpoena power from the department.

Art Wittich answered that the company doesn't want to remove the power of the subpoena from the department. They already have that under the Montana Administrative Procedures Act. The problem is that the DHES would be able to subpoena any other person or somebody before a violation occurs. The Montana Power has no problem with the department having subpoena power once they issue a notice of violation.

Mr. Wittich added that when the department goes to a third party for information, they can force people to come before the board or the department and give information. Instead, they should get it from the violator's spokesman. This amendment makes the bill consistent with federal law, and Montana Power's position all along has been consistency in regulations with the federal laws.

Senator Noble asked Mr. Wittich if the amendments in the bill were in his line of thinking.

Art Wittich answered that the amendments now make the bill consistent with federal laws. There is one minor exception and that is page 6, section 4. deviation from federal law, but Montana Power doesn't have a problem with that. Basically, that section allows the department to get the responsible person to monitor a waste site. Under federal law, if the owner/operator doesn't monitor, the agency may start monitoring but it cannot force a third party to monitor.

The amendments were moved and seconded, and were passed.

SB 371 as amended has been moved DO PASS.

ADJOURNMENT

Adjournment At: 1:12 p.m.

THOMAS F. KEATING, Chairman

TFK/hmc

ROLL CALL

NATURAL RESOURCES COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 2-17-89

NAME	PRESENT	ABSENT	EXCUSED
Chairman Tom Keating	✓		
Vice-Chairman Larry Tveit	✓		
Senator Fred VanValkenburg			✓
Senator Loren Jenkins		✓	
Senator Darryl Meyer	✓		
Senator Lawrence Stimatz	✓		
Senator Pete Story	✓		
Senator Bill Yellowtail		✓	
Senator Elmer Severson		✓	
Senator Cecil Weeding	✓		
Senator Dorothy Eck	✓		
Senator Jerry Noble	✓		

Each day attach to minutes.

SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE 2-17-89
BILL NO. SB 371

Proposed Amendments to Senate Bill No. 371
First Reading Copy
Offered by the Department of Health and Environmental Sciences
For the Senate Committee on Natural Resources

February 16, 1989

1. Page 8, lines 9 through 12.
Following: "violator" on line 9
Strike: "and any other person having information regarding the alleged violation or its resulting, actual, or potential impacts on public health, welfare or the environment"

2. Page 8, line 12.
Following: "board"
Insert: "or department,"

3. Page 8, line 14.
Following: "notice"
Strike: "and"
Insert: "to"

4. Page 8, line 15.
Following: "of"
Strike: ";"
Insert: "or to provide information regarding the alleged violation or its actual or potential impact on public health, welfare or the environment;"

5. Page 8, line 18.
Strike: Section 4 (a) in its entirety
Renumber: Subsequent subsection

6. Page 11, line 11.
Following: "to a"
Insert: "material"

7. Page 12, lines 14 and 15.
Following: "of" on line 14
Strike: "not less than $5,000 nor"
Insert: "no"

8. Page 12, line 19.
Following: "rule"
Insert: "material"

9. Page 13, line 2.
Strike: "minimum and"

Questions From Committee Members:

REP. RANEY asked an attorney from the department, Katherine Orr, if the bill would release from liability a corporation who had major releases on their own property. He asked how much the state was giving away in terms of liability. MS ORR said it could in that the bill was broadly worded, but that the section should be taken together with the section that takes out of the exemptions other categories. She did admit that some violators might not be covered, especially in the environmental context.

REP. RANEY asked the same question of Mr. Sherwood, who said that the federal law, CERCLA, recognized that hazardous materials were just that, and held people strictly liable, with no issue of negligence whatsoever. He said there were few exemptions. He said that although the language was broad, it would not allow the exemption of anyone. He suggested that his proposed amendment was necessary for consistency.

REP. ADDY asked Mr. Berry to restate his proposed amendment, and asked if the intent would be to do away with strict liability. MR. BERRY said that his amendment was the same as Mr. Sherwood's, inserting "negligent or" before grossly negligent, and that he approached the issue from a different direction. He said if a company had a particular site, and there was a release, and someone came in to voluntarily do something, they should be held to a standard of negligence rather than gross negligence because with gross negligence, it could be almost considered a willful or intentional act.

REP. RANEY asked Mr. Berry for his comments on the amendment proposed by Chris Kaufmann. Mr. Berry said that his initial reaction was favorable.

Closing by Sponsor:

SEN. HAGER said he wanted a bill that would create a situation in which a person was not afraid to offer assistance out of fear of liability. He said he would consult with the requesters of this legislation for their input on the amendments.

HEARING ON SB 371

Presentation and Opening Statement by Sponsor:

SENATOR TOM HAGER, Senate District 48, Billings Heights, presented SB 371, stating that it was introduced at the request of the Department of Health and Environmental Sciences (DHES). He said it would revise the Montana Hazardous Waste Act, and bring it into conformance with the

1984 amendments to the Federal Resource Conservation and Recovery Act (RCRA). He said it was his intent that the Montana act would be no stricter than the federal requirements in this area.

Testifying Proponents and Who They Represent:

Katherine Orr, Attorney, DHES
Chris Kaufmann, Montana Environmental Information Center
Roger Thorvilson, DHES

Proponent Testimony:

KATHERINE ORR testified that she had helped draft the bill. She said there were two significant parts in the bill: 1) an explanation regarding what is the consistent or parallel language with the federal RCRA Act; and 2) a new section or provision on the abatement of public nuisance. All of the other sections had language that was parallel or similar to the federal RCRA Act. She said the purpose of including that parallel language in the bill was because these other provisions were very useful in trying to enforce the hazardous waste program. These sections pertained to the requirement for corrective action for releases that occurred off-site, and in the case of a release, an understanding that an inventory could be obtained covering monitoring, testing and analysis from the previous owner. A section addressed the ability to seek recourse against prior owners, operators, transporters, or treatment, storage or disposal (TSD) facilities. The bill also clarified enforcement authority of DHES insofar as subpoenaing alleged violators to appear before the department or board.

MS ORR continued with the section on criminal penalties, and said there was a cataloguing of offenses which were seen to particularly undermine the objectives in the program; i.e., the ability of the program to be self-executing and the prevention of toxic substances from entering the environment. This section added penalties of sufficient deterrent effect such that Montana would not be viewed as a dumping ground or haven for polluters. She called attention to the fact that the criminal penalties applied to people or entities who knowingly violate the law. She referenced an affirmative statement in Section 9 that said it was unlawful to dispose of hazardous waste except as properly permitted. This self-evident provision was needed for enforcement purposes.

CHRIS KAUFMANN, MEIC, said the Hazardous Waste Act had to do with wastes generated and disposed right now. She said the mini Superfund Law that the committee dealt with before addressed wastes generated in the past. She said it was important to have a strong and flexible Hazardous Waste Act now so that there would not be many Superfund sites in the future.

ROGER THORVILSON, DHES, Hazardous Waste Program Manager, said he had no additional remarks, and that Ms Orr had explained the bill. He said he would be available for questions.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: REP. OWENS asked if the penalties listed in the bill were consistent with federal law. MR. THORVILSON said the criminal penalties listed in the bill were still less than provided under equivalent federal law. He said they were sufficient, however, to have EPA approve the state's program.

REP. HARPER commented that in the introduced bill, any other responsible party was included, so that the burden would fall on that person if the responsible party was not the present owner. He noted that those parts had been stricken by the committee, and replaced with language that said if the present owner did not have knowledge, then the most previous owner could have knowledge. He asked what the committee's thinking was in striking this language, and how this bill would allow the department to get at the person who caused the problem. MS ORR said the intention of the original language was to be able to require information from someone who was not an owner or operator, but who had knowledge of the site. What was not included in the bill, but was in the federal RCRA Act, was cost-recovery authority for the department. Otherwise, the result of the compromise with the Senate was to roughly achieve similar language with RCRA.

REP. HARPER commented that the wording was awkward, and MS ORR agreed. She said it was ambiguous as to whether the department could only go back to the most recent previous owner, or actually go back further to the owner or operator who had the most useful knowledge about the site.

REP. ADDY commented that the phrase at the top of page 7 meant the last person in the chain who could reasonably be expected to have actual knowledge. REP. HARPER suggested that plurals might help.

Closing by Sponsor: SEN. HAGER closed, stating that the bill was worked on substantially in the drafting and in committee and urged their favorable consideration.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members:

REP. GIACOMETTO asked how this bill would affect HB 603. MR. MITCHELL said if this bill worked, the Underground Storage Tank Leak Prevention Program, HB 603 would not be needed. The problem was that this program was not up and running. HB 603 was basically a catch-up measure, he said, to take care of leaks already occurring. He said HB 603 would mesh with this bill. He said SB 371 gave authority to the department to adopt rules and regulations for tank closure, tank installation, new tank design standards and financial responsibility. He said financial responsibility was the kicker. He said the federal financial responsibility rule was out now, and you needed $1,000,000 responsibility for clean-up and third-party damages. HB 603 set up a state fund that would assume financial responsibility for tank owners, a fund that would pick up, in lieu of $1,000,000 cash in the bank, the financial responsibilities of clean-up costs and third party damages.

REP. HARPER asked what effect the Senate's reduction of fees on small tanks would have. MR. MITCHELL said there would be no impact, because no figure had been considered for the small tanks in the fiscal note.

REP. OWENS asked if anyone knew the number of tanks involved. MR. MITCHELL said no one knew the number. The state recently adopted a notification process, and 18,254 tanks were now in the state's data base. After a statistician's review, the conclusion was that the actual number was closer to 30,000 tanks. He said 75% of the commercial tanks and 40% of the smaller tanks had now notified.

REP. RANEY said only 9,000 of those tanks would come under HB 603, and of those, several thousand had already been replaced.

Closing by Sponsor:

SEN. HAGER closed, saying that the same bill had been defeated on the floor of the Senate two years earlier. He said the process had been prolonged, and urged concurrence on the bill.

DAILY ROLL CALL

HOUSE NATURAL RESOURCES COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 3-8-87

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Raney, Chairman	✓		
Rep. Ben Cohen, Vice-Chairman	✓		
Rep. Kelly Addy	✓		
Rep. Vivian Brooke	✓		
Rep. Hal Harper	✓		
Rep. Mike Kadas	✓		
Rep. Mary McDonough	✓		
Rep. Janet Moore	✓		
Rep. Mark O'Keefe	✓		
Rep. Robert Clark	✓		
Rep. Leo Giacometto	✓		
Rep. Bob Gilbert	✓		
Rep. Tom Hannah	✓		
Rep. Lum Owens	✓		
Rep. Rande Roth	✓		
Rep. Clyde Smith	✓		

SENATE STANDING COMMITTEE REPORT

February 17, 1989

MR. PRESIDENT:

We, your committee on Natural Resources, having had under consideration SB 371 (first reading copy -- white), respectfully report that SB 371 be amended and as so amended do pass:

(See attached)

AND AS AMENDED DO PASS

Signed: _____

Thomas F. Keating, Chairman

2-15-89

scrsb371.217

VISITORS' REGISTER

Natural Resources COMMITTEE

BILL NO. SB 371 DATE 3-8-89

SPONSOR Sen Hager

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Roger Thorvilson	Dept of Health	✓	
Katherine Orr	"	✓	
Janet Ellis	Audubon	✓	
Mrs Wilson	Sierra Club	✓	
Tom Hagan	SD48	—	
Chris Kaskyan	MEIC	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.